

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Agriculture and Markets

EMERGENCY RULE MAKING

Various Trees and Plants of the Prunus Species

I.D. No. AAM-46-10-00019-E

Filing No. 132

Filing Date: 2011-01-28

Effective Date: 2011-01-28

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 140 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: This rule amends the existing plum pox virus quarantine in New York State in response to the most recent detections of this virus in the State. The purpose of the amendments is to help prevent the further spread of this viral infection of stone fruit trees within the State.

The plum pox virus, Potyvirus, is a serious viral disease of stone fruit and ornamental nursery stock that affects many of the Prunus species. This includes species of plum, peach, apricot, almond and nectarine. The plum pox virus does not kill infected plants, but seriously debilitates the productive life of the plants. This affects the quality and quantity of the fruit, which reduces its marketability. Symptoms

of the plum pox virus may manifest themselves on the leaves, flowers and fruits of infected plants and include green or yellow veining on leaves; streaking or pigmented ring patterns on the petals of flowers; and ring or spot blemishing on the fruit which may also become misshapen. The virus is spread naturally by several aphid species. These insects serve as vectors for the spread of the plum pox by feeding on the sap of infected trees and then feeding on plants which aren't infected with the virus. Plum pox virus may also be spread through the exchange of budwood and its propagation.

The plum pox virus was first reported in Bulgaria in 1915. It subsequently spread through Europe, the Middle East and Africa. Plum pox was first discovered in North America in 1999 when trees in an orchard in Pennsylvania were found to be infected with the virus. In the summer of 2000, the plum pox virus was discovered in Ontario within five miles of its border with New York. This prompted the Department, with the support of the United States Department of Agriculture (USDA), to begin annual plum pox surveys of stone fruit orchards in New York. From 2000 through 2005, more than 89,000 leaf samples were taken, analyzed and found to be negative for plum pox.

On June 1, 2009 and June 17, 2009, the plum pox virus was detected in two separate locations in Wayne County. On July 17, 2009, the virus was found in a third location in Wayne County and on July 22, 2009, a location in Orleans County tested positive for the virus. In response to these findings, the regulations amending two (2) of the three (3) regulated areas in Niagara County, establishing a new regulated area in Orleans County and establishing three (3) new regulated areas in Wayne County, were adopted as an emergency measure on March 3, 2010. Additionally, the March 3rd amendments deregulated one of the regulated areas in the Town of Porter in Niagara County. This is due to the fact that surveys and sampling within this regulated area have yielded negative results for the virus for three (3) consecutive years which justifies deregulation under existing federal protocols. On June 1, 2010, the regulations were readopted on an emergency basis. The regulations adopted on June 1st were the same as those promulgated on March 3rd, except that the June 1st regulations include amendments to the quarantined area in Orleans County (section 140.2(b)) and to one of the regulated areas in Wayne County (section 140.3(g)). Those changes to the regulations merely provide the correct street names for the boundaries and are technical in nature, since they do not change the size or scope of the areas in question. These emergency regulations as well as the emergency regulations promulgated on August 31, 2010 are substantially the same as those promulgated on June 1st.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest. The specific reason for this finding is that failure to immediately establish and extend the quarantine to regulate the intrastate movement of stone fruit could result in the further, unfettered spread of this plant virus throughout New York and into neighboring states. This would not only result in damage to the agricultural resources of the State, but could also result in a federal quarantine or exterior quarantines imposed by other states. Such quarantines would cause economic hardship for New York's stone fruit growers, since such quarantines may be broader than that

which we propose and may vary in requirements and prohibitions from state to state. The consequent loss of business would harm industries which are important to New York State's economy and as such, would harm the general welfare. Accordingly, it appears that this rule should be implemented on an emergency basis and without complying with the requirements of subdivision one of section 202 of the State Administrative Procedure Act, including the minimum periods therein for notice and comment.

Subject: Various trees and plants of the *Prunus* species.

Purpose: To amend the existing plum pox virus quarantine in New York State in response to the most recent detections of this virus.

Text of emergency rule: Section 140.2 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and a new section 140.2 is added to read as follows:

(a) That area of Niagara County which is bordered on the north by Lake Ontario and bordered on the east Johnson Creek Road, which extends south to its intersection with Route 104 (Ridge Road); extends west on Route 104 (Ridge Road) to its intersection with Orangeport Road; and extends south on Orangeport Road to its intersection with Slayton-Settlement Road; extending west on Slayton-Settlement Road to its intersection with Route 78 (Lockport-Olcott Road); extending south on Route 78 (Lockport-Olcott Road) to its intersection with Stone Road; extending northwest on Stone Road to its intersection with Sunset Drive; extending south on Sunset Drive to its intersection with Shunpike Road; extending west on Shunpike Road to its intersection with Route 93 (Townline Road); extending south on Route 93 (Townline Road) to its intersection with Route 270 (Campbell Boulevard); extending south on Route 270 (Campbell Boulevard) to its intersection with Beach Ridge Road; extending southwest on Beach Ridge Road to its intersection with Townline Road; extending south on Townline Road to its intersection with the Tonawanda Creek; following the Tonawanda Creek west to its entry into the Niagara River; following the Niagara River north to its entry into Lake Ontario.

(b) That area of Orleans County which is bordered on the north by Lake Ontario, on the east heading South from Lake Ontario on Kent Road to intersection with Ridge Road (Route 104); extending south on Desmond Road to intersection with State Route 31 (Telegraph Road); extending west on State Route 31 to intersection with Richs Corners Road; extending south on Richs Corners Road to its intersection with State Route 31A (East Lee Street Road); extending west on Route 31A to Culver Road; extending south on Culver Road to intersection with East Barre Road; extending west on East Barre Road to its intersection with State Route 98 (Quaker Hill Road); extending south on State Route 98 to the southern border of Orleans County; extending west along the southern border of Orleans County; extending north along the western border of Orleans County.

(c) That area of Wayne County which is bordered on the north by Lake Ontario and is bordered on the east by Maplevue Heights; extending south on Maplevue Heights to its intersection with Wright Road; extending east on Wright Road to its intersection with Dutch Street Road; extending south on Dutch Street Road to its intersection with Lasher Road; extending south on Lasher Road to its intersection with Wilson Road; extending west on Wilson Road to its intersection with Brown Road; extending south on Brown Road to its intersection with Salter Road; extending west on Salter Road and becoming Clinton Avenue; continuing west on Clinton Avenue to its intersection with Route 414; extending south on Route 414 to its intersection with Catch Pole Road; extending west on Catch Pole Road to its intersection with Covell Road; extending south on Covell Road to its intersection with Wayne Center Rose Road; extending west on Wayne Center Rose Road and becoming Ackerman Road; continuing west on Ackerman Road to its intersection with Route 14; extending south on Route 14 to its intersection with Burton Road; extending west on Burton Road to its intersection with Middle Sodus Road; extending north on Middle Sodus Road to its intersection with Maple Street Road; extending north on Maple Street Road to its intersection with McMullen Road; extending northwest on McMullen Road to its intersection with Deneef Road; extending south on Deneef Road to its intersection with Zurich Road; extending west on Zurich Road to its intersection with Arcadia-Zurich-Norris Road; extending south on Arcadia-Zurich-Norris Road to its intersection with Henkle Road; extending west on

Henkle Road to its intersection with Heidenreich Road; extending south on Heidenreich Road to its intersection with Fairville Station Road; extending northwest on Fairville Station Road to its intersection with Maple Ridge Road; extending northwest on Maple Ridge Road to its intersection with Decker Road; extending west on Decker Road to its intersection with Sand Hill Road; extending north on Sand Hill Road to its intersection with Smith Road; extending west on Smith Road to its intersection with Newark Road; extending south on Newark Road to its intersection with Desmith Road; extending west on Desmith Road to its intersection with Schilling Road; extending northwest on Schilling Road to its intersection with State Route 21; extending south on State Route 21 to its intersection with Cole Road; extending west on Cole Road to its intersection with Parker Road; extending south on Parker Road to its intersection with LeRoy Road; extending west on LeRoy Road to its intersection with Maple Avenue; extending north on Maple Avenue to its intersection with Marion Road; extending west on Marion Road to its intersection with Ontario Center Road; extending north on Ontario Center Road to its intersection with Atlantic Avenue; extending west on Atlantic Avenue to its intersection with Lincoln Road; extending north on Lincoln Road to its intersection with Haley Road; extending west on Haley Road to its intersection with County Line Road; extending north on County Line Road to its intersection with Lake Ontario.

Section 140.3 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and a new section 140.3 is added to read as follows:

(a) That area of Niagara County bordered on the north by Lake Ontario; bordered on the west by Maple Road; extending south on Maple Road to its intersection with Wilson-Burt Road; extending east on Wilson-Burt Road to its intersection with Beebe Road; extending south on Beebe Road to its intersection with Ide Road; extending east on Ide Road to its intersection with Route 78 (Lockport-Olcott Road); extending north on Route 78 (Lockport-Olcott Road) to its intersection with Lake Ontario, in the Towns of Burt, Newfane, and Wilson in the County of Niagara, State of New York.

(b) That area of Niagara County bordered on the north by Lake Ontario, bordered on the west by Lockport Olcott Road at its intersection with Lake Ontario; extending south on Lockport Olcott Road to its intersection of Route 18 (Lake Road); extending east on Route 18 (Lake Road) to its intersection with Transit Road; extending south on Transit Road to its intersection with Drake Settlement Road; extending east on Drake Settlement Road to its intersection with Hess Road; extending north on Hess Road to its intersection with West Somerset Road; extending east on West Somerset Road to its intersection with Hosmer Road; extending north on Hosmer Road to its intersection with Route 18 (Lake Road); extending due north from the intersection of Route 18 (Lake Road) and Hosmer Road (GPS Coordinates; N:43.348919, W:-78.604585) to Lake Ontario, forming the eastern boundary of the quarantine.

(c) That area of Orleans County bordered on the north by Route 104 (Ridge Road) at its intersection with Eagle Harbor Waterport Road; extending south on Eagle Harbor Waterport Road to its intersection with Eagle Harbor Knowlesville Road; west on Eagle Harbor Knowlesville Road to its intersection with Presbyterian Road; extending southwest on Presbyterian Road to its intersection with Longbridge Road; extending south on Longbridge Road to its intersection with State Route 31; extending west on State Route 31 to its intersection with Wood Road; extending south on Wood Road to West County House Road; extending west on West County House Road to its intersection with Maple Ridge Road; extending west on Maple Ridge Road to its intersection with Culvert Rd; extending north on Culvert Rd to its intersection with Telegraph Road; extending west on Telegraph Road to its intersection with Beales Road; extending north on Beales Road to its intersection with Portage Road; extending east on Portage Road to its intersection with Culvert Rd; extending north on Culvert Rd to its intersection with Route 104 (Ridge Road), in the Towns of Ridgeway and Gaines, in the County of Orleans, State of New York.

(d) That area of Wayne County bordered on the north by Shepard Road at its intersection with Fisher Road; extending east on Shepard Road to its intersection with Salmon Creek Road; extending southwest

on Salmon Creek Road to its intersection with Kenyon Road; extending west on Kenyon Road to its intersection with Furnace Road; extending north on Furnace Road to its intersection with Putnam Road; extending east on Putnam Road to its intersection with Fisher Road; extending north on Fisher Road to its intersection with Shepard Road, in the Towns of Ontario and Williamson, in the County of Wayne, State of New York.

(e) That area of Wayne County bordered on the north by Lake Road at its intersection with Redman Road; extending east to its intersection with Maple Avenue; extending south on Maple Avenue to its intersection with Middle Road; extending west on Middle Road to its intersection with Rotterdam Road; extending south on Rotterdam Road to its intersection with State Route 104; extending west on State Route 104 to its intersection with Pratt Road; extending south on Pratt Road to its intersection with Ridge Road; extending west on Ridge Road to its intersection with Richardson Road; extending south on Richardson Road to its intersection with Tripp Road; extending south on Tripp Road to its intersection with Podger Road; extending west on Podger Road to its intersection with East Townline Road; extending north on East Townline Road to its intersection with Everdyke Road; extending west on Everdyke Road to its intersection with Russell Road; extending south on Russell Road to its intersection with Pearsall Road; extending west on Pearsall Road to its intersection with State Route 21; extending north on State Route 21 to its intersection with State Route 104; extending east on State Route 104 to its intersection with East Townline road; extending north on East Townline Road to its intersection with Van Lare Road; extending east on Van Lare Road to its intersection with Redman Road; extending north on Redman Road to its intersection with Lake Road, in the Town of Sodus, in the County of Wayne, State of New York.

(f) That area of Wayne County bordered on the northeast by Sodus Bay to its intersection with Ridge Road; extending west on Ridge Road to its intersection with Boyd Road; extending north on Boyd Road to its intersection with Sergeant Road; extending north on Sergeant Road to its intersection with Morley Road; extending east on Morley Road to its intersection with State Route 14; extending north on State Route 14 to its intersection with South Shore Road; extending east on South Shore Road; then bordered on the east north east by Sodus Bay, in the Town of Sodus, in the County of Wayne, State of New York.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. AAM-46-10-00019-P, Issue of November 17, 2010. The emergency rule will expire March 28, 2011.

Text of rule and any required statements and analyses may be obtained from: Kevin King, Director, Division of Plant Industry, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087.

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Said Section also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law as he may deem necessary.

2. Legislative objectives:

The proposed rule establishing a quarantine accords with the public

policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the further spread within the State of a serious viral infection of plants, the plum pox virus (Potyvirus).

3. Needs and benefits:

This rule amends the existing plum pox virus quarantine in New York State in response to the most recent detections of this virus in the State. The purpose of the amendments is to help prevent the further spread of this viral infection of stone fruit trees within the State.

The plum pox virus, Potyvirus, is a serious viral disease of stone fruit trees that affects many of the Prunus species. This includes species of plum, peach, apricot, almond and nectarine. The plum pox virus does not kill infected plants, but debilitates the productive life of the trees. This affects the quality and quantity of the fruit, which reduces its marketability. Symptoms of the plum pox virus may manifest themselves on the leaves, flowers and fruits of infected plants and include green or yellow veining on leaves; streaking or pigmented ring patterns on the petals of flowers; and ring or spot blemishing on the fruit which may also become misshapen. There is no known treatment or cure for this virus. The virus is spread naturally by several aphid species. These insects serve as vectors for the spread of the plum pox virus by feeding on the sap of infected trees and then feeding on plants which aren't infected with the virus. Plum pox virus may also be spread through the exchange of budwood and its propagation.

The plum pox virus was first reported in Bulgaria in 1915. It subsequently spread through Europe, the Middle East and Africa. Plum pox was first discovered in North America in 1999 when trees in an orchard in Pennsylvania were found to be infected with the virus. In the summer of 2000, the plum pox virus was discovered in Ontario within five miles of its border with New York. This prompted the Department, with the support of the United States Department of Agriculture (USDA), to begin annual plum pox surveys of stone fruit orchards in New York. From 2000 through 2005, more than 89,000 leaf samples were taken, analyzed and found to be negative for plum pox.

In 2006, the plum pox virus was detected in two locations in Niagara County near the Canadian border. As a result, on July 16, 2007, the Department adopted, on an emergency basis, a rule which immediately established a plum pox virus quarantine in that portion of Niagara County. The plum pox virus was subsequently detected in four (4) other locations in Niagara County as well as one location in Orleans County. In response to these detections, on October 8, 2008, the Department adopted, on an emergency basis, amendments to the rule, which established the quarantine in Orleans County and extended the quarantine in Niagara County. This rule was adopted on a permanent basis on December 10, 2008.

On June 1, 2009 and June 17, 2009, the plum pox virus was detected in two separate locations in Wayne County. On July 17, 2009, the virus was found in a third location in Wayne County and on July 22, 2009, a location in Orleans County tested positive for the virus. In response to these findings, the regulations amending two (2) of the three (3) regulated areas in Niagara County, establishing a new regulated area in Orleans County and establishing three (3) new regulated areas in Wayne County, were adopted as an emergency measure on March 3, 2010. Additionally, the March 3rd amendments deregulated one of the regulated areas in the Town of Porter in Niagara County. This is due to the fact that surveys and sampling within this regulated area have yielded negative results for the virus for three (3) consecutive years which justifies deregulation under existing federal protocols. On June 1, 2010, the regulations were readopted on an emergency basis. The regulations adopted on June 1st were the same as those promulgated on March 3rd, except that the June 1st regulations include amendments to the quarantined area in Orleans County (section 140.2(b)) and to one of the regulated areas in Wayne County (section 140.3(g)). Those changes to the regulations merely provide the correct street names for the boundaries and are technical in nature, since they do not change the size or scope of the areas in question. The regulations adopted on an emergency basis on June 1st were readopted on an emergency basis on August 31, 2010. The current regulations are substantially the same as those promulgated on an emergency basis on August 31st.

The amendments are necessary, since the failure to immediately establish or extend this quarantine could result in the further, unfettered spread of this plant virus throughout New York and into neighboring states. This would not only result in damage to the natural resources of New York, but could also result in the imposition on New York of a federal quarantine or quarantines by other states. Such quarantines would cause economic hardship for New York's nurseries and stone fruit growers, since such quarantines may be broader than this one. The consequent loss of business would harm industries which are important to New York's economy and as such, would harm the general welfare.

4. Costs:

(a) Costs to the State government:

Regulated articles in the newly established regulated areas that are exposed to plum pox virus would be destroyed. Compensation for the regulated articles is predicated upon the age of the plants and trees. Compensation would range from \$4,368 to \$17,647 per acre, of which the USDA would pay 85% of the compensation. Accordingly, New York's 15% share of the compensation would be \$655 to \$2,647 per acre, provided the owners of the regulated articles in question submit verified claims to the Department in accordance with section 165 of the Agriculture and Markets Law, and provided further that damages are awarded based on those claims.

Nursery dealers and nursery growers would also be eligible to receive compensation for regulated articles planted in the newly established regulated areas and nursery stock regulated areas that would otherwise be prohibited from sale. New York would pay up to \$1,000 per acre in costs to remove such regulated articles.

(b) Costs to local government:

None.

(c) Costs to private regulated parties:

Regulated parties handling regulated articles in the newly established nursery stock regulated areas, pursuant to a compliance agreement, may require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement. This service is available at a rate of \$25.00 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 such inspections each year with a total annual cost of \$2,500.

Most shipments will be made pursuant to compliance agreements for which the costs may be lower.

Regulated parties would also incur those removal costs which exceed \$1,000 per acre for removal of regulated articles planted in the newly established regulated areas and nursery stock regulated areas.

(d) Costs to the regulatory agency:

None. It is anticipated that the regulatory oversight and enforcement of the expanded quarantine would be accomplished through use of existing staff and resources.

5. Local government mandate:

None.

6. Paperwork:

Nursery dealers and nursery growers handling regulated articles in the newly established nursery stock regulated areas would require a compliance agreement with the Department. They may also require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement of these regulated articles.

7. Duplication:

None.

8. Alternatives:

None. The failure of the State to establish and extend the quarantine in response to the most recent findings of the plum pox virus could result in the establishment of quarantines by the federal government or other states. It could also place the State's own natural resources at risk from the further spread of plum pox virus which could result from the unrestricted movement of regulated articles in the regulated areas. In light of these factors, there does not appear to be any viable alternative to the establishment of the quarantine proposed in this rulemaking.

9. Federal standards:

Sections 301.74 through 301.74-5 of Title 7 of the Code of Federal Regulations (CFR) restricts the interstate movement of regulated articles susceptible to the plum pox virus. This rule does not exceed any minimum standards for the same or similar subject areas, since it restricts the intrastate, rather than interstate, movement of regulated articles by establishing a plum pox virus quarantine in New York State.

10. Compliance schedule:

It is anticipated that regulated persons would be able to comply with the rule immediately.

Regulatory Flexibility Analysis

1. Effect on small business:

The establishment and extension of the plum pox virus quarantine is designed to prevent the further spread of this viral infection throughout New York State as well as into neighboring states and provinces. On June 1, 2009 and June 17, 2009, the plum pox virus was detected in two separate locations in Wayne County. On July 17, 2009, the virus was found in a third location in Wayne County and on July 22, 2009, a location in Orleans County tested positive for the virus. In response to these findings, the regulations amending two (2) of the three (3) regulated areas in Niagara County, establishing a new regulated area in Orleans County and establishing three (3) new regulated areas in Wayne County, were adopted as an emergency measure on March 3, 2010. Additionally, the March 3rd amendments deregulated one of the regulated areas in the Town of Porter in Niagara County. This is due to the fact that surveys and sampling within this regulated area have yielded negative results for the virus for three (3) consecutive years which justifies deregulation under existing federal protocols. On June 1, 2010, the regulations were readopted on an emergency basis. The regulations adopted on June 1st were the same as those promulgated on March 3rd, except that the June 1st regulations include amendments to the quarantined area in Orleans County (section 140.2(b)) and to one of the regulated areas in Wayne County (section 140.3(g)). Those changes to the regulations merely provide the correct street names for the boundaries and are technical in nature, since they do not change the size or scope of the areas in question. The regulations adopted on an emergency basis on June 1st were readopted on an emergency basis on August 31, 2010. The current regulations are substantially the same as those promulgated on an emergency basis on August 31st.

It is estimated that seven (7) stone fruit growers in Wayne County and three (3) stone fruit growers in Niagara County are located in the newly established quarantine or regulated areas. All of these entities are small businesses.

It is not anticipated that local governments would be involved in the handling or movement of regulated articles within any part of the quarantine areas.

2. Compliance requirements:

Any regulated parties in the newly established nursery stock regulated areas would be prohibited from the propagation of regulated articles. Nursery growers and nursery dealers who wish to handle regulated articles in these newly established nursery stock regulated areas would be required to enter into compliance agreements.

The amendments would prohibit regulated parties in the newly established nursery stock regulated areas from digging and moving regulated articles and planting or over-wintering regulated articles. In addition, regulated parties in these newly established areas would be required to maintain sales records of regulated articles for a period of three years.

All regulated parties in the newly established regulated areas would be prohibited from moving regulated articles within those regulated areas. Regulated parties would, however, be able to move regulated articles to and from the newly established regulated areas pursuant to a limited permit.

3. Professional services:

In order to comply with the rule, regulated parties handling regulated articles in the newly established nursery stock regulated areas, pursuant to a compliance agreement, may require an inspection and issuance of a federal or state phytosanitary certificate for interstate movement.

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule:

None.

(b) Annual cost for continuing compliance with the proposed rule:

Regulated parties handling regulated articles in the newly established nursery stock regulated areas pursuant to a compliance agreement may require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement. This service is available at a rate of \$25.00 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 such inspections each year with a total annual cost of \$2,500.

Most shipments will be made pursuant to compliance agreements for which the costs may be lower.

Regulated parties would also incur those removal costs which exceed \$1,000 per acre for removal of regulated articles planted in the regulated areas.

It is not anticipated that local governments would be involved in movement of regulated to or through the regulated areas.

5. Minimizing adverse impact:

The Department has designed the rule to minimize adverse economic impact on small businesses and local governments. The rule establishes and extends the quarantine to only those areas where the plum pox virus has been detected. Additionally, the rule lifts the quarantine in one area of Niagara County where the virus has not been detected for three (3) years. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

6. Small business and local government participation:

In 1999, a Plum Pox Virus Task Force was established in response to the initial discovery of the plum pox virus in Pennsylvania. The Task Force presently consists of representatives of the Department, the New York State Agricultural Experiment Station in Geneva; the United States Department of Agriculture, Cornell Cooperative Extension, the New York State Farm Bureau, the Canadian Food Inspection Agency and the stone fruit industry. The Task Force has convened annually via teleconference and assists in outreach as needed in response to changes in the spread of the virus. Outreach efforts will continue.

7. Economic and technological feasibility:

The economic and technological feasibility of compliance with the proposed rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Nursery dealers and nursery growers handling regulated articles within the newly established nursery stock regulated areas, other than pursuant to a compliance agreement, would require an inspection and the issuance of a phytosanitary certificate. Most shipments, however, would be made pursuant to compliance agreements for which there is no charge.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The establishment and extension of the plum pox virus quarantine is designed to prevent the further spread of this viral infection throughout New York State as well as into neighboring states and provinces. On June 1, 2009 and June 17, 2009, the plum pox virus was detected in two separate locations in Wayne County. On July 17, 2009, the virus was found in a third location in Wayne County and on July 22, 2009, a location in Orleans County tested positive for the virus. In response to these findings, the regulations amending two (2) of the three (3) regulated areas in Niagara County, establishing a new regulated area in Orleans County and establishing three (3) new regulated areas in Wayne County, were adopted as an emergency measure on March 3, 2010. Additionally, the March 3rd amendments deregulated one of the regulated areas in the Town of Porter in Niagara County. This is due to the fact that surveys and sampling within

this regulated area have yielded negative results for the virus for three (3) consecutive years which justifies deregulation under existing federal protocols. On June 1, 2010, the regulations were readopted on an emergency basis. The regulations adopted on June 1st were the same as those promulgated on March 3rd, except that the June 1st regulations include amendments to the quarantined area in Orleans County (section 140.2(b)) and to one of the regulated areas in Wayne County (section 140.3(g)). Those changes to the regulations merely provide the correct street names for the boundaries and are technical in nature, since they do not change the size or scope of the areas in question. The regulations adopted on an emergency basis on June 1st were readopted on an emergency basis on August 31, 2010. The current regulations are substantially the same as those promulgated on an emergency basis on August 31st.

It is estimated that seven (7) stone fruit growers in Wayne County and three (3) stone fruit growers in Niagara County are located in the newly established quarantine or regulated areas. All of these entities are located in rural areas of New York State.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

Any regulated parties in the newly established nursery stock regulated areas would be prohibited from the propagation of regulated articles. Nursery growers and nursery dealers who wish to handle regulated articles in these newly established nursery stock regulated areas would be required to enter into compliance agreements.

All regulated parties in the newly established regulated areas would be prohibited from moving regulated articles within those regulated areas. Regulated parties would, however, be able to move regulated articles to and from the newly established regulated areas pursuant to a limited permit.

In order to comply with the proposed rule, regulated parties handling regulated articles in the newly established nursery stock regulated areas, pursuant to a compliance agreement, may require an inspection and issuance of a federal or state phytosanitary certificate for interstate movement.

3. Costs:

Regulated parties handling regulated articles in the newly established nursery stock regulated areas pursuant to compliance agreement may require an inspection and the issuance of a federal or state phytosanitary certificate for interstate movement. This service is available at a rate of \$25.00 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 such inspections each year with a total annual cost of \$2,500.

Most shipments will be made pursuant to compliance agreements for which the costs will be lower.

Regulated parties would also incur those removal costs which exceed \$1,000 per acre for removal of regulated articles exposed to the plum pox virus.

4. Minimizing adverse impact:

The Department has designed the proposed rule to minimize adverse economic impact on regulated parties in rural areas. The rule establishes and extends the quarantine to only those areas where the plum pox virus has been detected. Additionally, the rule deregulates in one area of Niagara County where the virus has not been detected for three (3) consecutive years. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

5. Rural area participation:

In 1999, a Plum Pox Virus Task Force was established in response to the initial discovery of the plum pox virus in Pennsylvania. The Task Force presently consists of representatives of the Department, the New York State Agricultural Experiment Station in Geneva; the United States Department of Agriculture, Cornell Cooperative Extension, the New York State Farm Bureau, the Canadian Food Inspection Agency and the stone fruit industry. The Task Force has convened annually via teleconference and assists in outreach as needed in response to changes in the spread of the virus. Outreach efforts will continue.

Job Impact Statement

The establishment and extension of the plum pox virus quarantine is designed to prevent the further spread of this viral infection throughout New York State as well as into neighboring states and provinces. On June 1, 2009 and June 17, 2009, the plum pox virus was detected in two separate locations in Wayne County. On July 17, 2009, the virus was found in a third location in Wayne County and on July 22, 2009, a location in Orleans County tested positive for the virus. In response to these findings, the regulations amending two (2) of the three (3) regulated areas in Niagara County, establishing a new regulated area in Orleans County and establishing three (3) new regulated areas in Wayne County, were adopted as an emergency measure on March 3, 2010. Additionally, the March 3rd amendments deregulated one of the regulated areas in the Town of Porter in Niagara County. This is due to the fact that surveys and sampling within this regulated area have yielded negative results for the virus for three (3) consecutive years which justifies deregulation under existing federal protocols. On June 1, 2010, the regulations were readopted on an emergency basis. The regulations adopted on June 1st were the same as those promulgated on March 3rd, except that the June 1st regulations include amendments to the quarantined area in Orleans County (section 140.2(b)) and to one of the regulated areas in Wayne County (section 140.3(g)). Those changes to the regulations merely provide the correct street names for the boundaries and are technical in nature, since they do not change the size or scope of the areas in question. The regulations adopted on an emergency basis on June 1st were readopted on an emergency basis on August 31, 2010. The current regulations are substantially the same as those promulgated on an emergency basis on August 31st.

It is estimated that seven (7) stone fruit growers in Wayne County and three (3) stone fruit growers in Niagara County are located in the newly established quarantine or regulated areas.

A further spread of this plant infection would have very adverse economic consequences to these industries in New York State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government and by other states. By helping to prevent the further spread of the plum pox virus, the rule would help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's stone fruit and nursery industries.

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

Opioid Treatment Services**I.D. No.** ASA-07-11-00001-E**Filing No.** 131**Filing Date:** 2011-01-31**Effective Date:** 2011-01-31

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Repeal of Part 828; and addition of new Part 828 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07, 19.09, 19.21, 19.40, 32.01, 32.05, 32.07 and 32.09

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: The regulation has not been changed substantially in 34 years and the treatment of opioid addiction has changed substantially over that period of time and recognizes and allows for advances in toxicology testing and pharmacology.

Federal regulations were promulgated 9 years ago and this regulation brings NYS more reflective of the Federal regulations.

Subject: Opioid Treatment Services.

Purpose: Bring the current practice of opioid treatment services within NYS and to bring the regulation into alignment with Federal regulations.

Substance of emergency rule: OPIOID TREATMENT PROGRAMS

The proposed regulations would revise Section 828 of the Mental Hygiene law (Requirements for the operation of chemotherapy substance abuse programs) to allow for changes in addiction treatment services as the last changes to the regulation occurred under DSAS as Part 1040 in 1984 as 1040.21. It was then renumbered as Part 828 and moved to OASAS in 2000, with no significant changes. The methadone regulation has existed for 24 years without change even though the Federal rules of opioid treatment have changed due to advancements and evidence based practice.

Changes for Opioid Treatment Programs

- Conform OASAS regulations to federal regulations (42 CFR Part 8) regarding certification of opioid treatment programs (OTP).
 - Adds regulations related to buprenorphine (methadone alternative) treatment, removing an obstacle to physicians to administer buprenorphine in OTPs where clients may receive supportive services.
 - Provides for opioid medical maintenance (OMM), pursuant to federal waiver, for certain qualified opioid patients and providers.
 - Provides guidelines for certified providers to provide services at additional locations.
 - Requires medical directors to become certified in an area of addiction medicine.
 - Requires testing for Hepatitis and makes testing for STDs optional.
 - Increases flexibility in toxicology testing.
 - No longer requires OASAS approval for methadone dosage increases above 200 milligrams.
 - Recognizes that treatment for opioid addiction may be provided in a residential or in-patient setting and makes provisions for regulation of such services.
 - Greater consistency between federal and state regulations will benefit both providers and clients.
 - Adds language that states only clients with a primary diagnosis of opioid addiction may be admitted to an OTP.
 - Annual physical still required however at clinics discretion patient may be able to go to their private MD.
 - New language added for transfer patients.
 - More flexibility for counselor to patient staffing ratios.
 - Greater flexibility in providing patients with take home medication and removes agency approval on a one-time basis for up to 30 days take home dose.
 - Adds recall to reduce diversion.
 - Defines role of security guards at the OTP.
 - Defines aftercare.
 - States specialized services that are not defined by regulation must be approved by OASAS prior to implementation.
 - States providers must establish a community relations policy and committee.
 - Providers must establish a quality improvement policy.
 - Requires 50% of the counseling staff to be CASAC or CASAC-T within four years.
- This regulation was originally published in the NYS Register in December 2008. Many providers commented and OASAS responded. Here are the additional changes to the regulation.
- Adds language for approved medication which provides programs the ability to use methadone, buprenorphine or any other agent approved for opioid treatment by federal authorities.
 - Provides for opioid medical maintenance (OMM), pursuant to federal waiver, for certain qualified opioid patients and providers.
 - Adds language for health care coordinator which is consistent with other regulations in the Part.
 - Changed language for nurse/patient ratio back to prior language as no change was intended.
 - Continuing care treatment is limited to four months, where after a client who requires more counseling should be referred to another modality.
 - Increases flexibility in toxicology testing.
 - Multidisciplinary team language changed to be consistent with our regulations in the Part.
 - Mandatory use of Locatdr form lifted.
 - Allows for prescribing professionals to perform medical services except for initial dose and medical maintenance.
 - Clarified definitions for taper and detox.
 - Clarified language for transfer patients.
 - Recognizes that treatment for opioid addiction may be provided in a residential or in-patient setting and makes provisions for regulation of such services.

· Changed the language and now allows an individual who voluntarily completed treatment to return to treatment without confirming current opioid dependence of two years and instead can accept them with one year.

A primary goal of the proposed amendments is to improve treatment cost effectiveness in all opioid treatment programs. The proposed amendments accomplish this in several ways. OTPs flexibility in toxicology testing is expanded to permit the option of oral fluid testing which is less onerous to staff, more dignified for the patient, and allows several patients to be tested simultaneously. Increased toxicology testing will improve patient outcomes through early identification and appropriate counseling. Because fewer patients present with sexually transmitted disease (STD) testing for STD is no longer required, but can be completed as necessary for those patients who request testing or exhibit signs and symptoms. However, to protect the public, testing for Hepatitis is mandated but federal funding or local DOH funds are available for Hepatitis testing and vaccines to offset costs.

More efficient and cost-effective administration is also a goal of the proposed rule. OASAS does not expect to incur increased costs related to administering the new rule. OASAS will modify the review instrument currently used to evaluate OTPs and will provide additional technical assistance to OTPs, but this is not expected to increase agency costs because staff time currently needed to process individual and general regulatory waivers to current regulations will be decreased and can be allocated more efficiently.

Municipalities may recognize savings because the proposed regulation changes the number of years it may take a client to achieve a monthly reduced medication pick-up schedule for take home medications from four years to three years. Medicaid costs for visits and billing will be reduced because the patient goes to an OMM only once per month rather than weekly.

The proposed amendments will result in a reduction in paperwork for both OASAS and its certified providers. For example, the proposed regulations will reduce the number of individual patient exemptions and general waivers from current regulation, saving providers and the agency costly administrative time. An estimated monthly average of 10 requests for waivers would be eliminated. The proposed regulation allows more flexibility in take home medication and clinic schedule changes, areas of the highest number of individual patient exemptions.

The proposed regulation removes a requirement for OASAS approval for methadone dosage increases above 200 milligrams based on review of several available studies. In January 2007, 103 of 115 certified clinics requested a waiver from OASAS regarding prior OASAS approval for methadone dosage increases; granting the waiver resulted in 114 fewer individual patient exemptions regarding dosage increases during 2007. The proposed draft regulations would eliminate the need for providers to submit this waiver renewal upon recertification.

Federal regulations set the minimum standards and preserve states' authority to regulate OTPs and determine appropriate additional regulations. New York state has many unique concerns because the state has more OTP clinics and patients (115 and 39,314 respectively) than any of the other 44 states and territories providing opioid treatment. In New York City, multiple clinics serving thousands of patients may exist within blocks of each other leading to community resistance and public opposition to community based treatment programs. As a result, New York state regulations tend to be more stringent than federal standards.

OASAS solicited comments on the proposed regulations and possible alternatives from a cross-section of New York's upstate and downstate treatment provider community, as well as urban and rural programs. OASAS utilized a statewide coalition group, the Committee of Methadone Program Administrators (COMPA), to distribute the proposed regulation to all of its members and to collect comments. All comments received were reviewed and incorporated wherever appropriate. The proposed regulations were also shared with the National Alliance of Methadone Advocates (NAMA), New York States Council of Local Mental Hygiene Directors, New York State's Advisory Council, and Alcoholism and Substance Abuse Providers of New York State (ASAP).

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires April 30, 2011.

Text of rule and any required statements and analyses may be obtained from: Deborah Egel, 1450 Western Ave., Albany, NY 12203, (518) 485-2312, email: DeborahEgel@oasas.state.ny.us

Summary of Regulatory Impact Statement

The proposed Opioid Treatment for Addiction regulation was originally submitted for public review and comment within the field and then publicly in the NYS Department of State Register in December 2008. Prior to these proposed changes the last amendment to the regulation occurred under DSAS as Part 1040 in 1984 as 1040.21. It was then renumbered as Part 828 and moved to OASAS in 2000, with no significant

changes. The methadone regulation has existed for 26 years without change even though the Code of Federal Regulations, title 42, Part 8 of opioid treatment have changed due to advancements and evidence based practice. Therefore the impact of the proposal will more closely align state regulations with federal rules that were promulgated in 2001, that changed due to advancements and evidence based practice.

Opioid addiction is a chronic illness which can be treated effectively with medications that are administered under conditions consistent with their pharmacological efficacy, and when treatment includes necessary supportive services such as psychosocial counseling, treatment for co-occurring disorders, medical services and, when appropriate, vocational rehabilitation. Medication assisted treatment is an evidence based practice for opioid dependency treatment. The proposed regulation sets forth standards to guide opioid dependency treatment.

Proposed changes recognize opioid addiction as a chronic illness that can be treated with certain medications (medication assisted treatment) in conjunction with supportive services (counseling, treatment for co-occurring disorders, and vocational rehabilitation).

1. Statutory Authority:

Mental Hygiene Law (MHL) § 19.07(e) authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services (OASAS) to ensure that persons who abuse or are dependent on alcohol and/or substances and their families receive effective and high quality care and treatment. MHL § 19.09(b) authorizes the Commissioner to adopt regulations to implement any matter under his or her jurisdiction.

MHL § 19.16 requires the commissioner to establish and maintain, either directly or through contract, a central registry for purposes of preventing multiple enrollment in methadone programs.

MHL § 19.40 authorizes the Commissioner to issue operating certificates for the provision of chemical dependence services.

MHL § 19.15(a) bestows upon the Commissioner the responsibility for promoting, establishing, coordinating, and conducting programs for the prevention, diagnosis, treatment, aftercare, rehabilitation, and control in the field of chemical abuse or dependence.

MHL § 19.21 (b) requires the Commissioner to establish and enforce certification, inspection, licensing and treatment standards for alcoholism, substance abuse, and chemical dependence facilities.

MHL § 19.21(d) requires the Commissioner to promulgate regulations to evaluate chemical dependence treatment effectiveness and to establish a procedure for reviewing and evaluating the performance of providers of services in a consistent and objective manner.

MHL § 32.01 authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by MHL article 32.

MHL § 32.05 requires providers to obtain an operating certificate issued by the Commissioner in order to operate chemical dependence services including but not limited to methadone.

MHL § 32.09(b) gives the Commissioner the power to withhold an operating certificate for a Methadone provider until statutory requirements are satisfied.

2. Legislative Objectives:

Article 32 of the Mental Hygiene Law (§ 32.01) enables the Commissioner to regulate and assure consistent high quality of services within the state for persons suffering from chemical abuse or dependence, their families and significant others, and those at risk of becoming chemical abusers. 14 NYCRR Part 828 establishes requirements for chemotherapy substance abuse treatment (methadone). Revising policy and procedures with regard to opioid treatment, will establish a standard for all facilities, which is in the best interest of the patient, and will assist opioid treatment programs to provide better health care services and recovery from opioid dependency.

3. Needs and Benefits:

The proposed amendments advance the goals of guaranteeing patients the best treatment in a manner that is cost effective and accountable. The proposed amendments are needed because of developments inside and outside the agency including: (1) issues identified during an on-going broad-based dialogue with OASAS certified providers and affiliated stakeholders to define a "gold standard" for treatment and/or identify "best practices" for quality patient-centered care; (2) the need to conform regulations to updated federal standards related to opioid treatment (42 CFR Part 8), and; (3) evolution of social attitudes toward greater acceptance of persons recovering from chemical dependence.

Part 828 conforms state and federal regulations affecting approximately 36% (40,000) of addiction patients in New York State. Opioid Treatment Program (OTP) physicians may administer buprenorphine (methadone alternative) in an OTP where clients will receive additional beneficial services such as counseling, toxicology, and medical support. Opioid Medical Maintenance (OMM; pursuant to a federal waiver to select providers approved by OASAS) permits monthly dispensing in a physician's office for certain patients who do not need long-term counseling.

This regulation was originally published in the NYS Register in

December 2008. Many providers responded and offered comments. Here are the resulting changes to the regulation.

- . Adds regulations related to buprenorphine (methadone alternative) treatment, removing an obstacle to physicians to administer buprenorphine in OTPs where clients may receive supportive services.

- . Provides for opioid medical maintenance (OMM), pursuant to federal waiver, for certain qualified opioid patients and providers.

- . Adds language for health care coordinator which is consistent with other regulations in the Part.

- . Changed language for nurse/patient ratio back to prior language as no change was intended.

- . Continuing care treatment is limited to four months, where after a client who requires more counseling should be referred to another modality.

- . Increases flexibility in toxicology testing.

- . Multidisciplinary team language changed to be consistent with our regulations in the Part.

- . Mandatory use of Locatdr lifted.

- . Allows for prescribing professionals to perform medical services except for initial dose and medical maintenance.

- . Clarified definitions for taper and detoxification.

- . Clarified language for transfer patients.

- . Recognizes that treatment for opioid addiction may be provided in a residential or in-patient setting and makes provisions for regulation of such services.

- . Changed the language and now allows an individual who voluntarily completed treatment to return to treatment without confirming current opioid dependence of two years and instead can accept them with one year.

In addition, all technical issues such as lettering, grammar and punctuation were fixed where necessary.

4. Costs:

Additional costs, if any, are up-front, minimal, and offset by improved treatment outcomes, increased staff efficiency, and clearer compliance directives.

a. Costs to regulated parties:

Patients and service providers are regulated parties. Patients will not incur additional costs. Providers may incur minimal up-front costs associated with laboratory testing, training and/or hiring qualified health professionals, but costs will be offset by improved outcomes, increased staff efficiency, and clearer compliance directives.

The proposed toxicology regulations are more cost effective: optional oral fluid testing is less onerous to staff, more dignified for the patient, and can address several patients simultaneously. Providers will know when patients relapse to deliver appropriate services for improved outcomes. The proposed regulation no longer mandates sexually transmitted disease (STD) testing but recommends testing to be completed as necessary for patients who request testing or exhibit signs and symptoms. However, to protect the public, testing for Hepatitis is mandated because Hepatitis C has become epidemic; federal and DOH funds offset costs of testing and vaccines.

OASAS proposes requiring medical directors hired after the promulgation of the new rule to be certified in Addiction Medicine. All medical directors must obtain a board certification in one of three types of addiction medicine subspecialties and become buprenorphine certified within four months of employment (completion of an 8-hour course). Physicians may be hired on a probationary basis with four years to obtain certification.

The regulation requires fifty percent of staff to be Qualified Health Professionals (QHPs). Patients in OTPs with multiple medical, psychiatric and psychosocial barriers require specially trained staff. Most OASAS outpatient programs already meet or exceed this requirement because Credentialed Alcohol and Substance Abuse Counselors (CASAC) trainees are counted towards the 50 percent requirement. The proposed amendments for OTPs include a two year implementation to reach the 50% level plus flexibility in medication administration, toxicology and staffing configurations.

Providers will not incur any additional costs for materials. Requirements for OTP quality assurance are already mandated under Federal standards.

b. Costs to the agency, state and local governments:

OASAS does not anticipate increased administrative costs. OASAS will modify the review instrument currently used to evaluate OTPs and provide technical assistance to OTPs. Staff time needed to process individual and general regulatory waivers to current regulations will be decreased and such time can be allocated more efficiently.

Counties, cities, towns or local districts will incur no additional costs. Municipalities may realize savings because the regulation reduces (four years to three years) the time for an OTP client to achieve a monthly medication pick-up schedule; Medicaid costs will be reduced because the patient goes to an OMM monthly rather than weekly.

5. Local Government Mandates:

There are no new mandates or administrative requirements placed on local governments.

6. Paperwork / Reporting:

Paperwork will be reduced by reducing the requests for patient exemptions and regulatory waivers (average of 10 per month). The requirement that OASAS approve methadone dosage increases above 200 milligrams is removed. Studies show that adequate dosage varies among patients depending on metabolism and interaction with concurrent medications, yet inadequate methadone dosing is common (NIH, 1998; Marion, 2005). Dosing flexibility can be safe and improves treatment retention (Tenore, 2004; Maddux, et al, 1997). In January 2007, 103 of 115 OASAS clinics requested a waiver for dosage increases; granting the waiver resulted in 114 fewer individual patient exemptions. The proposed regulation eliminates the necessity of submitting this waiver renewal upon recertification.

7. Duplications:

There are no duplications of other state or federal requirements.

8. Alternatives:

The only other alternative is to keep the existing regulation in place. This would be detrimental to both the opioid treatment providers and patients being served. In an effort to elicit comments on the proposed regulations and possible alternatives, these amendments were shared with New York's treatment provider community, representing a cross-section of upstate and downstate, as well as urban and rural programs. OASAS used a statewide coalition group, the Committee of Methadone Program Administrators (COMPA), to facilitate distribution of this proposed regulation to all of its members and have collected comments. The regulations has been published, more comments were received, reviewed and more changes were made. Additionally, these regulations were also shared with the National Alliance of Methadone Advocates (NAMA), New York State's Council of Local Mental Hygiene Directors, New York State's Advisory Council, and Alcoholism and Substance Abuse Providers of NYS (ASAP).

9. Federal Standards:

Federal regulations set minimum standards for OTPs. New York's take-home regulations are more stringent than federal standards; New York has more OTP clinics and patients (115 and 39,314 respectively) than any of the other states and territories providing opioid treatment. Multiple New York City clinics serve thousands of patients within blocks of each other and often face community resistance.

Methadone diversion and related mortality is a concern because of the number of clinics and a substantial black market (Bell & Zador, 2000, Breslin & Malone, 2006, & Lewis, 1997). Regulations addressing diversion limit patients' receipt of take-home medication (minimum two years of treatment and additional criteria to receive a 30 day take-home supply). The proposed regulation seeks to reduce diversion yet balance patients' ease of access by increasing testing frequency and adding routine "call backs" for patients with take home doses (Varenbut, et al, 2007). Studies show benefits to take home options: improves treatment retention, attracts new patients, rewards patients' abstinence or treatment compliance, and improves patient quality of life (Ritter, et al, 2005). Most methadone-related deaths linked to diversion involved patients in pain management centers, not OTPs (Center for Substance Abuse Treatment, 2004; Cicero, 2005).

10. Compliance Schedule:

Providers may comply with the proposed changes upon adoption. Full implementation of this Part will be completed within one year of adoption with the exception of phased-in staffing requirements.

References

- Bell, J, & Zador D.A. (2000). A risk-benefit analysis of methadone maintenance treatment. *Drug Safety* 2000, 22(3):179-190.
- Breslin K.T. & Malone S. (2006). Maintaining the viability and safety of the methadone maintenance treatment program. *Journal of Psychoactive Drugs* 2006, 38(2):157-160.
- Center for Substance Abuse Treatment. (2004). Methadone associated mortality: Report of a national assessment, May 8-9, 2003. CSAT Publication No. 28-03. Rockville, MD: Center of Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration.
- Cicero T.J. (2005). Diversion and abuse of methadone prescribed for pain management. *Journal of American Medical Association*, 293(3): 297-298.
- Leavitt, S.B. (2003). Methadone dosing and safety in the treatment of opioid addiction. *Addiction Treatment Forum* (special report), Available at: <http://www.atforum.com>.
- Lewis D. (1997). Credibility, support for methadone treatment-finally. *Brown University Digest of Addiction: Theory & Application*, 1997.
- Maddux, J.F., Prihoda, T.J., & Vogtberger, K.N. (1997). The relationship of methadone dose and other variables to outcomes of methadone maintenance. *The American Journal on the Addictions*, Vol. 6, No. 3, 246-255.

National Institute of Health. (1998). National Consensus Development Panel on Effective Medical Treatment of Opiate Addiction. *Journal of the American Medical Association*, 280 (1998): 1936-43.

Ritter, A. & Di Natalie, R. (2005). The relationship between take-away methadone policies and methadone diversion. *Drug and Alcohol Reviews*, 24:347-352.

Tenore, P. (2004). DINO-VAMP: A helpful acronym in determining optimal methadone dosing and brief review of dosing literature. *Journal of Maintenance in the Addictions*, Vol. 2(4), 29-45.

Varenbut, M., Teplin, D., Daiter, J., Raz, B., Worster, A, Emadi-Konjin, P., Frank, N., Konyer, A., Greenwald, I., & Snider-Adler, M. (2007) "Tampering by office-based methadone maintenance patients with methadone take home privileges: a pilot study", *Harm Reduction Journal* 2007, 4:15 doi:10.1186/1477-7517-4-15. Available at: <http://www.pharmreductionjournal.com/content/4/1/15>.

The Center of Substance Abuse Treatment (CSAT) of the Substance Abuse and Mental Health Services Administration (SAMHSA) within the US Department of Health and Human Services (HHS).

Regulatory Flexibility Analysis

Effect of the Rule: The proposed Part 828 will impact certified and/or funded providers. It is expected that the development of opioid treatment programs will require providers to amend some of their policies and procedures in their treatment modality. These new services will result in better patient treatment outcomes. Local health care providers may see an increase in patients seeking medication assisted treatment for opioid dependency due to less restrictive procedures for medication assisted treatment. As a result of patients receiving these services, local governments may see a decrease in services associated with active illicit drug use such as arrests and emergency room visits. Also, local governments and districts will not be affected because any nominal increase in cost will be offset by better patient outcomes.

Compliance Requirements: It is expected that there will be some changes in compliance requirements. However, providers are equipped to make the changes which will enhance patient care. Also, providers are already required by federal statutes to provide certain services such as utilization review, so it is not expected that this regulation, which provides additional guidance on good utilization review practices, will have additional costs.

Professional Services: While it is expected that programs may require additional professional services the impact is nominal because over half of the current opioid treatment providers already meet the criteria set forth in the regulation for qualified health professionals and the regulation allows for phased implementation over four years.

Compliance Costs: Some programs may need additional formally trained staff to meet the proposed requirements; however, new CASAC credentialing rules, acceptance of CASAC trainees and phased implementation will decrease any barriers for compliance. Laboratory fees may increase; however, existing reimbursement fees should be sufficient to meet these requirements.

Economic and Technological Feasibility: Compliance with the record-keeping and reporting requirements of the proposed Part 828 is not expected to have an economic impact or require any changes to technology for small businesses and government.

Minimizing Adverse Impact: Part 828 has been carefully reviewed to ensure minimum adverse impact to providers. Alcoholism and Substance Abuse Providers of NYS, Inc., Greater New York Hospital Association, Healthcare of New York, The Federal Center for Substance Abuse Treatment, The Federal Drug Enforcement Agency, the OASAS Methadone Transformation Team, the Council of Local Mental Hygiene Directors and the Advisory Council on Alcoholism and Substance Abuse Services and approximately 50 opioid treatment programs were given the opportunity to comment on this proposal. Any impact this rule may have on small businesses and the administration of state or local governments and agencies will either be a positive impact or the nominal costs and compliance are small and will be absorbed into the already existing economic structure. The positive impact for our patients and our health care system, out weigh any potential minimal costs.

Small Business and Local Government Participation: The proposed regulations were shared with New York's treatment provider community including, Alcoholism and Substance Abuse Providers of NYS, Inc., Greater New York Hospital Association, Healthcare of New York, The Federal Center for Substance Abuse Treatment, The Federal Drug Enforcement Agency, the OASAS Methadone Transformation Team, the Council of Local Mental Hygiene Directors and the Advisory Council on Alcoholism and Substance Abuse Services.

Rural Area Flexibility Analysis

A rural flexibility analysis is not provided since these proposed regulations would have no adverse impact on public or private entities in rural areas. The majority of opioid treatment providers are located in NYC.

There are a few others upstate, but they are in cities, of various sizes. There are only three providers located in Ulster, Broome and Montgomery which may be considered a rural area however they are in towns where the density is greater than 150 people per square mile. The compliance, recordkeeping and paperwork requirements are the minimum needed to insure compliance with state and federal requirements and quality patient care.

Job Impact Statement

The implementation of Part 828 will have an impact on jobs in that it will require 50% of the staff at an OTP to be a qualified health professional which is in alignment with other NYS treatment regulations (eg. Part 822). The hiring of formally trained staff will improve patient outcomes. At the present time OASAS has determined that most programs already meet or exceed this requirement. In addition, the regulation allows for CASAC trainees to be counted towards the 50% of QHP on staff and there is a phased implementation over the course of four (4) years. Finally, the change in CASAC testing requirements should increase the number of CASAC's in NYS. So while the current staff may need to enter formal education programs in order to maintain their employment this will help create new professional staff in New York State. This regulation will not adversely impact jobs outside of the agency.

Banking Department

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. BNK-07-11-00011-E

Filing No. 159

Filing Date: 2011-02-01

Effective Date: 2011-02-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 419 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Banking Board or Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers' response to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers' performance.

In addition to addressing the pressing issue of mortgage loan delinquencies and loss mitigation, the rule addresses other areas of significant concern to homeowners, including the handling of borrower complaints and inquiries, the payment of taxes and insurance, crediting of payments and handling of late payments, payoff balances and servicer fees. The rule also sets forth prohibited practices such as engaging in deceptive practices or placing homeowners' insurance on property when the servicers has reason to know that the homeowner has an effective policy for such insurance.

Subject: Business conduct of mortgage loan servicers.

Purpose: To implement the purpose and provisions of the Mortgage Lending Reform Law of 2008 with respect to mortgage loan servicers.

Substance of emergency rule: Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including “Servicer”, “Qualified Written Request” and “Loan Modification”.

Section 419.2 establishes a duty of fair dealing for Servicers in connection with their transactions with borrowers, which includes a duty to pursue loss mitigation with the borrower as set forth in Section 419.11.

Section 419.3 requires compliance with other State and Federal laws relating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

Section 419.4 describes the requirements and procedures for handling to consumer complaints and inquiries.

Section 419.5 describes the requirements for a servicer making payments of taxes or insurance premiums for borrowers.

Section 419.6 describes requirements for crediting payments from borrowers and handling late payments.

Section 419.7 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period and the amounts deposited into and disbursed from escrow. The section also describes the Servicer’s obligations with respect to providing a payment history when requested by the borrower or borrower’s representative.

Section 419.8 requires a late payment notice be sent to a borrower no later than 17 days after the payment remains unpaid.

Section 419.9 describes the required provision of a payoff statement that contains a clear, understandable and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date.

Section 419.10 sets forth the requirements relating to fees permitted to be collected by Servicers and also requires Servicers to maintain and update at least semi-annually a schedule of standard or common fees on their website.

Section 419.11 sets forth the Servicer’s obligations with respect to handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This Section includes requirements relating to procedures and protocols for handling loss mitigation, providing borrowers with information regarding the Servicer’s loss mitigation process, decision-making and available counseling programs and resources.

Section 419.12 describes the quarterly reports that the Superintendent may require Servicers to submit to the Superintendent, including information relating to the aggregate number of mortgages serviced by the Servicer, the number of mortgages in default, information relating to loss mitigation activities, and information relating to mortgage modifications.

Section 419.13 describes the books and records that Servicers are required to maintain as well as other reports the Superintendent may require Servicers to file in order to determine whether the Servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received, communications with borrowers, financial reports and audited financial statements.

Section 419.14 sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and placing insurance on a mortgage property without written notice when the Servicer has reason to know the homeowner has an effective policy in place.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires May 1, 2011.

Text of rule and any required statements and analyses may be obtained from: Jane M. Azia, NYS Banking Department, One State Street, New York, NY 10004, (212) 709-3503, email: jane.azia@banking.state.ny.us

Regulatory Impact Statement

1. Statutory authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the “Mortgage Lending Reform Law”), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Mortgage Lending Reform Law to add the definitions of “mortgage loan servicer” and “servicing mortgage loans”. (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent. The registration requirements do not apply to an “exempt organization,” licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations.

New Paragraph (d) was added to Subsection (5) of Section 590 by the Mortgage Lending Reform Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be promulgated by the Banking Board or prescribed by the Superintendent, and all applicable Federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Mortgage Lending Reform Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Mortgage Lending Reform Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Mortgage Lending Reform Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Mortgage Lending Reform Law to extend the Superintendent’s examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Mortgage Lending Reform Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Mortgage Lending Reform Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent’s power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for mortgage loan servicer registration and branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative objectives.

The Mortgage Lending Reform Law was intended to address various problems related to residential mortgage loans in this State. The law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there has heretofore been no general regulation of servicers by the state or the Federal government.

The Mortgage Lending Reform Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this State. The new law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Banking Board and the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Banking Board and the superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this State.

Part 418 of the Superintendent’s Regulations, initially adopted on an emergency basis on July 1 2009, addresses the first component of the mortgage servicing statute by setting standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as setting financial responsibility standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. This part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the

handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Collectively, the provisions of Part 418 and 419 implement the intent of the Legislature to register and supervise mortgage loan servicers.

3. Needs and benefits.

Governor Paterson reported in early 2008 that there were more than 52,000 foreclosure filings in 2007, or approximately 1,000 per week. That number increased in 2008, averaging approximately 1,100 per week in the first quarter. While there was some drop in foreclosure filings in 2009 to just over 50,000, the crisis continues and the problems that have affected so many have been found to implicate not only the origination of residential mortgage loans, but also their servicing and foreclosure. The Mortgage Lending Reform Law adopted a multifaceted approach to the problem. It addressed a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loan servicers.

Until July 1, 2009, when the mortgage loan servicer registration provisions first became effective, the Department regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; erroneously force-placing insurance when borrowers already have insurance; and failing to engage in prompt and appropriate loss mitigation efforts.

More than 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these over 8% were seriously delinquent as of the fourth quarter of 2009. Despite various initiatives adopted at the state level and the creation Federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners, the number of loans modified have not kept pace with the number of foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

As noted above, Part 418, initially adopted on an emergency basis on July 1 2009, relates to the first component of the mortgage servicing statute - the registration of mortgage loan servicers. It was intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers. It also provided for the suspension, revocation and termination of licensees involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower's account, authorized fees, late charges and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and recordkeeping requirements to enable the Superintendent to determine the servicer's compliance with applicable laws, its financial condition and the status of its servicing portfolio.

Since the adoption of Part 418, 45 entities have pending applications or been approved for registration and nearly 180 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements.

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages

must notify the Superintendent that they do so, and will be required to comply with the conduct of business and consumer protection rules applicable to mortgage loan servicers.

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.

4. Costs.

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other Federal or state laws, Federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the Federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC and OTS publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. The State Foreclosure Working Group, consisting of thirteen state Attorneys General and three state Banking regulators, including New York, collects and reports on similar data from the largest subprime mortgage servicers. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from Federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and recordkeeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and should assist in decreasing the number of foreclosures in this State.

The regulations will not result in any fiscal implications to the State. The Banking Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local government mandates.

None.

6. Paperwork.

Part 419 requires mortgage loan servicers to keep books and records related to its servicing for a period of three years and to produce quarterly reports and financial statements as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically and would therefore be virtually paperless. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations. The various Federal laws that touch upon aspects of mortgage loan servicing are noted in Section 9 "Federal Standards" below.

8. Alternatives.

The Mortgage Lending Reform Law required the registration of mortgage loan servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to register mortgage loan servicers and regulate the manner in which they conduct business. The Department circulated a proposed draft of Part 419 and received comments from and met with industry and consumer groups. The current Part 419 reflects the input received. The alternative to these regulations is to do nothing or to wait for the newly created Federal bureau of

consumer protection to promulgate national rules, which could take years, may not happen at all or may not address all the practices covered by the rule. Thus, neither of those alternatives would effectuate the intent of the legislature to address the current foreclosure crisis, help at-risk homeowners vis-à-vis their loan servicers and ensure that mortgage loan servicers engage in fair and appropriate servicing practices.

9. Federal standards.

Currently, mortgage loan servicers are not required to be registered by any Federal agencies, and there are no comprehensive Federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan. While the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may propose additional regulations for mortgage loan servicers, there is no certainty that it will do so or to what extent.

10. Compliance schedule.

The regulations will become effective on October 1, 2010.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The rule will not have any impact on local governments. The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. Of the 45 entities which have pending applications or have been approved for registration to date and the nearly 180 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Banking Department of servicers who are not a bank, mortgage banker, mortgage broker or other exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, sets for the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

3. Professional Services:

None.

4. Compliance Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent

with or substantially similar to standards found in other Federal or state laws, Federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the Federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC and OTS publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. The State Foreclosure Working Group, consisting of thirteen state Attorneys General and three state Banking regulators, including New York, collects and reports on similar data from the largest subprime mortgage servicers. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from Federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and recordkeeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

5. Economic and Technological Feasibility:

For the reasons noted in Section 4 above, the rule should impose no adverse economic or technological burden on mortgage loan servicers that are small businesses.

6. Minimizing Adverse Impacts:

As noted in Section 1 above, most servicers are not small businesses. Many of the requirements contained in the rule derive from Federal or state laws, existing servicer guidelines utilized by Fannie Mae and Freddie Mac and best industry practices.

Moreover, the ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this State.

7. Small Business and Local Government Participation:

The Banking Department distributed a draft of proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department likewise distributed a draft of proposed Part 419 to consumer groups, received their comments on the proposed rule and met with consumer representatives to discuss the proposed rule in person. The rule as finally proposed reflects the input received from both industry and consumer groups.

Rural Area Flexibility Analysis

Types and Estimated Numbers. Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 45 entities have pending applications or have been approved for registration and nearly 180 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 100 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

Compliance Requirements. The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Banking Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring

registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs. The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from Federal or state laws, current Federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 45 entities that have pending applications or have been approved for registration, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

Minimizing Adverse Impacts. As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas. In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loan servicers that service not more than 12 mortgage loans or more than \$5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

Rural Area Participation. The Department issued a draft of Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups following the release of the draft rule. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This

part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule reflect derive from Federal or state laws and reflect existing best industry practices.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-07-11-00010-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by adding thereto the position of Assistant Chief Investigations.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Department of Correctional Services

NOTICE OF ADOPTION

Inmate Personal Property Claims

I.D. No. COR-45-10-00001-A

Filing No. 133

Filing Date: 2011-01-28

Effective Date: 2011-02-16

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 1700.5(d)(2) and 1700.10 of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Inmate Personal Property Claims.

Purpose: To update the current of oversight for DOCS Office of Inmate Claims and to change the reporting period.

Text or summary was published in the November 10, 2010 issue of the Register, I.D. No. COR-45-10-00001-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, New York State Department of Correctional Services, 1220 Washington Avenue, Building 2 - State Campus, Albany, NY 12206-2050, (518) 457-4951, email: Maureen.Boll@docs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

NOTICE OF ADOPTION

Hunting Wild Turkey

I.D. No. ENV-46-10-00002-A

Filing No. 158

Filing Date: 2011-02-01

Effective Date: 2011-02-16

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 1.40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0903 and 11-0905

Subject: Hunting wild turkey.

Purpose: To establish a spring youth turkey hunting season in Suffolk County that coincides with the youth turkey hunt in upstate NY.

Text or summary was published in the November 17, 2010 issue of the Register, I.D. No. ENV-46-10-00002-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Michael Schiavone, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8883, email: wildliferegs@gw.dec.state.ny.us

Additional matter required by statute: A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

Assessment of Public Comment

The Department of Environmental Conservation (DEC) received one comment stating support for DEC's proposed spring youth turkey hunting season in Suffolk County. No other public comments were received.

Department of Motor Vehicles

NOTICE OF ADOPTION

Cell Phone Violations

I.D. No. MTV-50-10-00002-A

Filing No. 136

Filing Date: 2011-02-01

Effective Date: 2011-02-16

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Repeal of section 131.3(b)(7)(ix) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 510(3)(i)

Subject: Cell phone violations.

Purpose: To assign points for cell phone violations.

Text or summary was published in the December 15, 2010 issue of the Register, I.D. No. MTV-50-10-00002-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Monica J Staats, NYS Department of Motor Vehicles, Legal Bureau, Room 526, Six Empire State Plaza, Albany, NY 12228, (518) 486-3131, email: monica.staats@dmv.ny.gov

Assessment of Public Comment

The agency received no public comment.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-42-10-00001-A

Filing Date: 2011-02-01

Effective Date: 2011-02-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Decrease in rates for sale of firm power and related tariff changes applicable to governmental customers located in New York City.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the Sale of Power and Energy.

Purpose: To recover the Authority's cost of providing firm power and energy services.

Substance of final rule: The Power Authority's Notice of Proposed rulemaking published on October 20, 2010 and amended on November 10, 2010 proposed to increase the Fixed Costs component of the production rates to be charged to New York City Governmental Customers in 2011 by \$1.3 million or 0.8% compared to 2010 rates charged to those Customers. Comments on the proposal were received from New York City. Based on those comments and staff's analysis, the Authority determined that the Fixed Costs component of the production rates should be decreased by \$0.8 million or 0.5%. The new rates will be applicable commencing with the February 2011 billing period.

Final rule as compared with last published rule: Substantial revisions were made in Paragraph 1.

Text of rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main St., 11-P, White Plains, NY 10601, (914) 390-8085, email:secretarys.office@nypa.gov .

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

NOTICE OF ADOPTION**Rates for the Sale of Power and Energy**

I.D. No. PAS-42-10-00002-A

Filing Date: 2011-02-01

Effective Date: 2011-02-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Decrease in rates for sale of firm power and related tariff changes applicable to governmental customers located in Westchester County.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the sale of power and energy.

Purpose: To recover the Authority's cost of providing firm power and energy services.

Text or summary was published in the October 20, 2010 issue of the Register, I.D. No. PAS-42-10-00002-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main St., 11-P, White Plains, NY 10601, (914) 390-8085, email: secretarys.office@nypa.gov

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

NOTICE OF ADOPTION**Rates for the Sale of Power and Energy**

I.D. No. PAS-46-10-00009-A

Filing Date: 2011-02-01

Effective Date: 2011-02-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Revision in rates for Village of Mayville.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for the sale of power and energy.

Purpose: Maintain system's fiscal integrity; this revision in rates does not result from Power Authority rate increase to the village.

Text or summary was published in the November 17, 2010 issue of the Register, I.D. No. PAS-46-10-00009-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, NY 10601, (914) 390-8085, email: karen.delince@nypa.gov

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Public Service Commission**NOTICE OF ADOPTION****Allocation of a Property Tax Refund**

I.D. No. PSC-21-10-00023-A

Filing Date: 2011-01-26

Effective Date: 2011-01-26

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 1/20/11, the PSC adopted an order approving the terms of a joint proposal submitted by Consolidated Edison Company of New York, Inc. and Department Staff for the allocation of a property tax refund.

Statutory authority: Public Service Law, section 113(2)

Subject: Allocation of a property tax refund.

Purpose: To approve the terms of joint proposal for the allocation of a property tax refund.

Substance of final rule: The Commission, on January 20, 2011 adopted an order approving the terms of a joint proposal submitted by Consolidated Edison Company of New York, Inc. (Company) and Department of Public Service Staff for the allocation of a property tax refund of approximately \$1.5 million associated with Company property located in the Town of East Fishkill, New York, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (09-M-0867SA1)

NOTICE OF ADOPTION**Allocation of a Gross Receipts Tax Refund**

I.D. No. PSC-21-10-00024-A

Filing Date: 2011-01-26

Effective Date: 2011-01-26

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 1/20/11, the PSC adopted an order approving the terms of a joint proposal submitted by Consolidated Edison Company of New York, Inc.'s and Department Staff concerning a Gross Receipts Tax (GRT) refund.

Statutory authority: Public Service Law, section 113(2)

Subject: Allocation of a Gross Receipts Tax refund.

Purpose: To approve the terms of a joint proposal for the allocation of a Gross Receipts Tax refund.

Substance of final rule: The Commission, on January 20, 2011, adopted an order approving the terms of a Joint Proposal submitted by Consolidated Edison Company of New York, Inc.'s and Department of Public Service Staff for the allocation of the Gross Receipts Tax refund, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-M-0039SA1)

NOTICE OF ADOPTION**Niagara Mohawk Power Corporation d/b/a National Grid's Economic Development Plan for 2011****I.D. No.** PSC-39-10-00017-A**Filing Date:** 2011-01-28**Effective Date:** 2011-01-28

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 1/20/11, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's Economic Development Plan for 2011 at the spending level of \$9.1 million as approved by the Commission in Case 10-E-0050.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

Subject: Niagara Mohawk Power Corporation d/b/a National Grid's Economic Development Plan for 2011.

Purpose: To approve Niagara Mohawk Power Corporation d/b/a National Grid's Economic Development Plan for 2011.

Substance of final rule: The Commission, on January 20, 2011, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's Economic Development Plan for 2011 at the spending level of \$9.1 million as approved by the Commission in Case 10-E-0050, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-M-0429SA1)

NOTICE OF ADOPTION**Approving the Yokogawa Flow Computer and Data Acquisition Unit Model MW-100 in Steam Applications in NYS****I.D. No.** PSC-41-10-00011-A**Filing Date:** 2011-01-26**Effective Date:** 2011-01-26

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 1/20/11, the PSC adopted an order approving Consolidated Edison Company of New York Inc.'s application to permit the use of the Yokogawa Flow Computer and Data Acquisition Unit Model MW-100 in steam applications in New York State.

Statutory authority: Public Service Law, section 80

Subject: Approving the Yokogawa Flow Computer and Data Acquisition Unit Model MW-100 in steam applications in NYS.

Purpose: To permit the use of the Yokogawa Flow Computer and Data Acquisition Unit Model MW-100 in steam applications in New York State.

Substance of final rule: The Commission, on January 20, 2011 adopted an order approving Consolidated Edison Company of New York Inc.'s application to permit the use of the Yokogawa Flow Computer and Data Acquisition Unit Model MW-100 in steam applications in New York State, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-S-0455SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Waiver of 16 NYCRR Sections 894.1 Through 894.4 and 894.9****I.D. No.** PSC-07-11-00002-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The PSC is considering whether to approve, in whole or in part, a petition by the Town of Bolivar (Allegany County), for a waiver of 16 NYCRR sections 894.1 through 894.4 and 894.9 pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 through 894.4 and 894.9.

Purpose: To allow the Town of Bolivar to waive certain preliminary franchise procedures to expedite the franchising process.

Substance of proposed rule: The PSC is considering whether to approve, in whole or in part, a petition by the Town of Bolivar (Allegany County) for a waiver of 16 NYCRR sections 894.1 through 894.4 and 894.9 pertaining to franchising procedures.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-V-0617SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Waiver of 16 NYCRR Sections 894.1 Through 894.4 and 894.9****I.D. No.** PSC-07-11-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The PSC is considering whether to approve, in whole or in part, a petition by the Town of Angelica (Allegany County), for a waiver of 16 NYCRR sections 894.1 through 894.4 and 894.9 pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 through 894.4 and 894.9.

Purpose: To allow the Town of Angelica to waive certain preliminary franchise procedures to expedite the franchising process.

Substance of proposed rule: The PSC is considering whether to approve, in whole or in part, a petition by the Town of Angelica (Allegany County) for a waiver of 16 NYCRR sections 894.1 through 894.4 and 894.9 pertaining to franchising procedures.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(11-V-0039SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Waiver of 16 NYCRR Sections 894.1 Through 894.4 and 894.9

I.D. No. PSC-07-11-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The PSC is considering whether to approve, in whole or in part, a petition by the Town of Wirt (Allegany County), for a waiver of 16 NYCRR sections 894.1 through 894.4 and 894.9 pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 through 894.4 and 894.9.

Purpose: To allow the Town of Wirt to waive certain preliminary franchise procedures to expedite the franchising process.

Substance of proposed rule: The PSC is considering whether to approve, in whole or in part, a petition by the Town of Wirt (Allegany County) for a waiver of 16 NYCRR sections 894.1 through 894.4 and 894.9 pertaining to franchising procedures.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-V-0616SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Utility Energy Efficiency Program, Performance Incentive Mechanism and Program Cost Recovery

I.D. No. PSC-07-11-00005-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering a petition filed by Central Hudson Gas & Electric Corporation to discontinue the Expanded Residential Electric HVAC program that was approved in the Energy Efficiency Portfolio Standard proceeding.

Statutory authority: Public Service Law, section 66(1)

Subject: Utility energy efficiency program, performance incentive mechanism and program cost recovery.

Purpose: To promote gas and electricity energy conservation in New York.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a petition submitted by the Central Hudson Gas & Electric Corporation (Central Hudson) on January 25, 2011 seeking approval to discontinue an electric energy efficiency program that was approved in the Commission's January 4, 2010 Order in the Energy Efficiency Portfolio Standard (EEPS) proceeding, Cases 07-M-0548 and 08-E-1135. Specifically, Central Hudson seeks to end the Expanded Residential Electric HVAC program and relief from any financial incentives or penalties associated with the program. In addition, Central Hudson requests to be permitted to continue its SBC collections for EEPS program without adjustment.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(07-M-0548SP31)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Billing Period and Annual Credit Requirements Applicable to Certain Net Metering Customers

I.D. No. PSC-07-11-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering the implementation of billing period and annual credit requirements applicable to certain net metering customers.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (5), (12), 66-j and 66-l

Subject: Billing period and annual credit requirements applicable to certain net metering customers.

Purpose: Consideration of the billing period and annual credit requirements applicable to certain net metering customers.

Substance of proposed rule: The Public Service Commission is considering the implementation of billing period and annual credit requirements applicable to certain net metering customers, as detailed in an Order issued January 25, 2011 in Case 10-E-0645. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-E-0645SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Waiver of 16 NYCRR Sections 894.1 Through 894.4 and 894.9

I.D. No. PSC-07-11-00007-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The PSC is considering whether to approve, in whole or in part, a petition by the Town of Burns (Allegany County) for waiver of 16 NYCRR sections 894.1 through 894.4 and 894.9 pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 through 894.4 and 894.9.

Purpose: To allow the Town of Burns to waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The PSC is considering whether to approve, in whole or in part, a petition by the Town of Burns (Allegany County), for a waiver of 16 NYCRR sections 894.1 through 894.4 and 894.9 pertaining to the franchising process.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-V-0646SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Dishonored Payments

I.D. No. PSC-07-11-00008-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering a proposed tariff filing by Central Hudson Gas & Electric Corporation to make various changes in its rates, charges, rules and regulations contained in its Schedule for Electric Service—PSC No. 15.

Statutory authority: Public Service Law, section 66(12)

Subject: Dishonored Payments.

Purpose: To revise the dishonored payment fee.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas & Electric Corporation (Central Hudson or the Company) to revise the Company's dishonored payment fee for customers who submit negotiable instruments that are subsequently dishonored or deemed uncollectible. The Company proposes to increase the maximum dishonored payment fee from a total of \$10.00 per such instrument to a total of \$25.00 per such instrument. The proposed filing has an effective date of June 1, 2011.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-E-0042SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Dishonored Payments

I.D. No. PSC-07-11-00009-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering a proposed tariff filing by Central Hudson Gas & Electric Corporation to make various changes in its rates, charges, rules and regulations contained in its Schedule for Gas Service, PSC No. 12 — Gas.

Statutory authority: Public Service Law, section 66(12)

Subject: Dishonored Payments.

Purpose: To revise the dishonored payment fee.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas & Electric Corporation (Central Hudson or the Company) to revise the Company's dishonored payment fee for customers who submit negotiable instruments that are subsequently dishonored or deemed uncollectible. The Company proposes to increase the maximum dishonored payment fee from a total of \$10.00 per such instrument to a total of \$25.00 per such instrument. The proposed filing has an effective date of June 1, 2011.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-G-0043SP1)

Racing and Wagering Board

NOTICE OF ADOPTION

Minimum Age of Persons Allowed to Bet on Horse Racing

I.D. No. RWB-32-10-00002-A

Filing No. 135

Filing Date: 2011-01-28

Effective Date: 2011-02-16

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 4009.8 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1), 301(1), 520(1) and (3)

Subject: Minimum age of persons allowed to bet on horse racing.

Purpose: To make the minimum betting age of 21 found in section 4009.8 of 9 NYCRR consistent with statutory betting age of 18.

Text or summary was published in the August 11, 2010 issue of the Register, I.D. No. RWB-32-10-00002-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: John Googas, New York State Racing & Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.ny.gov

Assessment of Public Comment

The agency received no public comment.